THE HONOURABLE SRI BILAL NAZKI

THE ACTING CHIEF JUSTICE

AND

THE HONOURABLE SRI JUSTICE

R.SUBHASH REDDY

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WRIT APPEAL Nos. 294, 1139, 1142 & 1150 OF 2005

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COMMON JUDGMENT:

(per Honourable Sri Justice R.Subhash Reddy)

These four Writ Appeals are directed against the orders dated: 4.11.2004 passed in Writ Petition Nos. 19579, 19539, 19540 and 19628 of 2002 by the learned Single Judge wherein the challenge was to the notification issued under Section 4(1) of the Land Acquisition Act, 1894, dated: 10.7.2002 for acquisition of Ac. 2.04 gts., Ac.1.10 gts., 16.29 gts. and Ac. 0.13 gts., respectively, of land belonging to the appellant-petitioners. The total extent of the land sought to be acquired under the said notification was Ac. 80.35 guntas. Inasmuch as the notification under challenge in all these appeals is one and the same, they are clubbed together and are being disposed of by common judgment.

The genesis leading to the filing of these cases, in nutshell, is as follows:

The notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") was issued proposing to acquire an extent of Ac. 80.35 of land including the land belonging to the appellant-petitioners situated at Nanakramguda village, Serilingampally Mandal, Ranga Reddy District for the purpose development of new projects by Andhra Pradesh Industrial Infrastructure Corporation Ltd. (for short "A.P.I.I.C.), Hyderabad and urgency clause under Section 17 of the Act was invoked.

The said notification has been challenged by various persons including the appellant-petitioners in various Writ Petitions. The writ petitions covered by these appeals were disposed of by a learned Single Judge following the orders dated: 25.4.2003 passed in W.P.No.21712 of 2002 wherein the very notification which was challenged in the present writ petitions was challenged. In the said writ petition,

learned Single Judge held that the acquisition notification itself states, a statement buttressed by the assertions in the counter-affidavit, that the acquisition is intended for a public purpose, to wit, the extension of the Financial District and the establishment of an information technology park and its infrastructural facilities. The learned Single Judge further held that the acquisition is for the purpose of enabling the activities of The Andhra Pradesh Industrial Infrastructure Corporation Limited, an instrumentality of State which is engaged in the development of special projects, like Hardware park, Financial District, Indian Institute of Information Technology, Hi-tech city project etc. and the said purpose is demonstrably a public purpose. The learned Single Judge also held that the availability of alternative lands as pleaded by the petitioners is also not correct as the lands are urged to be not contiguous to the existing developed areas and therefore do not constitute alternative available lands. Ultimately, the said writ petition was disposed of directing the respondents to issue notice for an enquiry under Section 5-A of the Act to the persons whose lands are to be acquired including the petitioners therein and to take appropriate further steps after such enquiry on the ground that the enquiry under Section 5-A of the Act cannot be jettisoned on jejune grounds of irrational and unsubstantiated urgency, as no such urgency was demonstrated before the Court by the respondents. However, the learned Single Judge did not interfere with the notification issued under Section 4(1) of the Act. The said order of the learned Single Judge in W.P.No.21712 of 2002 was affirmed by a Division Bench of this Court.

These Writ Appeals have been filed by raising additional grounds that the appellant-petitioners came to know about the orders issued by the Government in G.O.Ms.No.14, Industries & Commerce (IP) Department, dated: 11.1.2005 subsequent to the filing of the Writ Appeals.

It is contended by Sri Vedula Venkataramana, the learned Counsel appearing for the appellants, that by acquiring the lands, the respondent-Corporation, i.e. APIIC, is allowed to enter into a development agreement with a foreign company, by name, M/s. Emaar Properties PJSC; and, as such, the acquisition is for a foreign company. In that view of the matter, the acquisition proceedings are nothing but colourable exercise of power and, as seen from G.O.Ms.No.14, dated: 11.1.2005, the purposes mentioned therein cannot be said to be public purposes, and, thus, the notification issued under Section 4(1) of the Act is illegal. It is further submitted that the procedure contemplated for acquisition of the lands of the appellants to the said

foreign company in Chapter VII was not followed and, as such, the very notification issued under Section 4(1) of the Act is illegal and has to be set aside. In support of his arguments, the learned Counsel has placed reliance on the judgments of the Supreme Court in ***Pratibha Nema Vs. State of Madhya Pradesh*, *S.S. Darshan Vs. State of Karnataka,*** **and,** ***Srinivasa Cooperative House Building Society Limited Vs. Madam Gurumurthy Sastry*.**

On the other hand, it is submitted by the learned Advocate General appearing for the respondents, that large extents of Government lands in the villages of Gachibouli, Manikonda, Nanakramguda and other adjoining villages situated in periphery of Hyderabad were handed over to the APIIC for developing special Projects like Software layout, Indian School of Business, Indian Institute of Information Technology, Hi-tech city, Games village and Sports stadia, Integrated International Convention Centre, Golf Course, Financial District etc. and that some of the projects have already taken shape, and, other projects are in various stages of development. It is further submitted, that the Andhra Pradesh Industrial Infrastructure Corporation Limited was designated by the State Government as nodal agency for developing all these projects. For implementation of some of the projects, Dubai based company, by name, M/s. Emaar Properties PJSC, is selected through international competitive bidding process and a collaboration agreement was entered into between the APIIC and M/s. Emaar Properties PJSC, through joint venture companies. In that view of the matter, it cannot be said that the acquisition is for the purpose of the said company so as to violate the procedure contemplated in the Chapter VII of the Act. It is submitted, that one of the projects, i.e. Financial District, is intended for the benefit of State of Andhra Pradesh, and the lands belonging to the appellants situated at Nankramguda village were requisitioned by APIIC for establishment of the said project, since said lands form a compact block. Further, it is submitted, that the establishment of Financial District is intended for the benefit of State and its people and, as such, the same is a public purpose. It is his case that the motive behind the establishment of Financial District by the Government of Andhra Pradesh is to invite private entrepreneurs for setting up industries in the State of Andhra Pradesh for development of State and to generate employment. As such, the purpose, for which the said lands are acquired, is a public purpose within the meaning of the provisions of the Act. The learned Advocate General also placed reliance on the very same

judgments relied on by the learned Counsel for the appellants, in support of his argument that notified purpose is a public purpose.

Sri E.Madan Mohan Rao, learned Counsel appearing for the APIIC submitted that the expression 'public purpose' is defined under Section 3(f) of the Act. It is his submission that having regard to the nature of projects undertaken by the APIIC and the provision of the land under acquisition to the APIIC, an instrumentality of State, it should be construed as a public purpose within the meaning of the said provision.

It is to be seen that the acquisition of the land under the Land Acquisition Act is an exercise of power of eminent domain by the State and is compulsory in nature. Even as per the notification published under Section 4(1) of the Act, it is stated that the land is needed for public purpose, namely, for development of new projects undertaken by the APIIC. In the light of the averments made in the counter affidavit, the acquisition of land is intended for public purpose, i.e. for development of Financial District. Several other developmental projects were also taken up in the large extents of the government lands and also lands of the appellants, which are notified for the purpose of maintaining compact block. APIIC is an instrumentality of the State operating in the area of industrial infrastructure, for the purposes as mentioned in the notification. The notification coupled with assertions made in the counter affidavit and additional counter affidavit demonstrably indicate the purpose, for which the land is being acquired, is a public purpose. The very fact that the land was notified on the requisition of the State owned Corporation for providing the same to it for development of the projects from the public funds shows that it is for the public benefit, and, therefore, it comes within the meaning of public purpose, as defined under Section 3(f) of the Act. Merely because a Memorandum of Understanding is entered into for development of the projects by the APIIC with a foreign company does not mean that the acquisition is for the purpose of that company so as to follow the procedure as contemplated in Chapter VII of the Act. At the same time, it is also to be seen that the funds are flowing only from the Government, and, not from the said foreign company, for the purpose of providing compensation for acquisition and once the development is completed, entrepreneurs will be invited for setting up industries in the said project, which will be a step towards development of the State and generation of the employment. In

that context also, the acquisition cannot be said to be for foreign company as alleged by the appellants. Equally, the submission of the learned Counsel for the appellants that the acquisition is for future projects, and, the same is a colourable exercise of power, cannot be accepted. Nowhere it is stated in the notification that the acquisition is for future projects and the very assertion made in the counter affidavit that some of the projects have already taken shape and developmental activities have already been started, belies the said version. In that view of the matter, we do not find any substance in the arguments of the learned Counsel for the appellants that the power exercised by the respondents is a colourable exercise warranting quashing of the notification.

In ***Pratibha Nema Vs. State of Madhya Pradesh*** (1 supra), the Apex Court while considering the scope of public purpose mentioned in the Act, observed that satisfaction of the Government as to existence of public purpose cannot be lightly faulted. In the said judgment, it is held, that public purpose does not cease to be so merely because the acquisition facilitates the setting up of industry by a private enterprise and benefits it to that extent. In the said judgment, the Apex Court has further held that non existence or otherwise of public purpose has to be judged by the lead and initiative taken by the entrepreneurs desirous of setting up the industry and the measure of co-ordination between them and various State agencies.

Even in the case of ***S.S. Darshan Vs. State of Karnataka*** (2 supra), the Apex Court while considering the notification under Sections 4(1) and 17 of the Act issued for acquiring the land for public purpose of establishment of a technological park, a joint venture project by the state of Karnataka and private company, has held that the cumulative effect of acquisition is for public purpose of setting up the Technology Park by the Government of Karnataka.

Similarly, in the instant case, if the ultimate object of housing the industries in a compact block for the purpose of establishment and expansion of financial district is taken into consideration, the same cannot, but be stated to be an acquisition for a public purpose.

I n ***Srinivasa Cooperative House Building Society Limited Vs. Madam Gurumurthy Sastry*** (3 supra), the Apex Court has held that ‘public purpose’ as

mentioned in the provisions of the Act is not capable of precise definition, and, each case has to be judged in the light of the purpose for which acquisition is sought for.

Therefore, from the above judgments, it is clear that whether it is for public purpose or not depends on the facts of each case. In the instant case, the acquisition of the land for the development of projects and the establishment of Financial District undertaken by the respondents, in the back drop of assertions made in the counter affidavit coupled with the definition under Section 3(f) of the Act, can be said to be for a public purpose. All the judgments referred to above will not support the case of the appellants in support of their pleas that acquisition is for new projects, and, the same can be construed as for non-existing purpose, and, as colourable exercise of power. With regard to other grounds, namely, the appellants are small farmers, and, other alternative government lands are available, were already rejected earlier on the ground that the availability of alternative lands as pleaded by the petitioners was not correct as the lands were urged to be not contiguous to the existing developed areas. We are in agreement with the said finding and reject the contention for the same reason. Even with reference to the additional grounds raised, as discussed in the earlier paragraphs, we do not find any force in the submissions of the learned Counsel for the appellants.

For the foregoing reasons, we do not find any valid ground to interfere with the orders of the learned Single Judge. The Writ Appeals are devoid of merits and are accordingly dismissed. No costs.

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BILAL NAZKI, ACJ

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R.SUBHASH REDDY, J.

Msnr.